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10/511,440	10/25/2004	Akinobu Kakimoto	260742US3PCT	2401
22850	7590	04/23/2009	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			GAMBETTA, KELLY M	
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1                   RECORD OF ORAL HEARING  
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3                   UNITED STATES PATENT AND TRADEMARK OFFICE  
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6                   BEFORE THE BOARD OF PATENT APPEALS  
7                   AND INTERFERENCES  
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10                  Ex parte AKINOBU KAKIMOTO,  
11                    KENTARO OSHIMO,  
12                    MASAHIKO MATSUDO  
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15                  Appeal 2009-1281  
16                  Application 10/511,440  
17                  Technology Center 1700  
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20                  Oral Hearing Held: March 19, 2009  
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24                  Before TERRY J. OWENS, MARK NAGUMO, and  
25                  JEFFREY B. ROBERTSON, Administrative Patent Judges  
26

27                  ON BEHALF OF THE APPELLANT:

28

29                  CHRISTOPHER A. BULLARD, ESQ.  
30                  Oblon & Spivak  
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34

1                 The above-entitled matter came on for hearing on Thursday,  
2 March 19, 2009, commencing at approximately 2:36 p.m., at the U.S. Patent  
3 and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before  
4 Kevin E. Carr, Notary Public.

5                 MR. BULLARD: Good afternoon, Your Honors. How would  
6 you like me to proceed this afternoon? Would you like me to just --

7                 JUDGE OWENS: 1281 first.

8                 MR. BULLARD: 1281? May I approach the court  
9 stenographer?

10                 Good afternoon, Your Honors. My name is Christopher  
11 Bullard and I represent the Appellant in appeal number 2009-1281.

12                 In this case there are two independent claims that are argued on  
13 appeal, individually argued on appeal. Those independent claims each recite  
14 a relationship between two variables, head distance and gas jetting velocity.  
15 They recite a specifically claimed range of this relationship between the two  
16 variables.

17                 The Examiner improperly relies on the Park reference as  
18 rendering this claimed range obvious. In particular, the Examiner notes that  
19 each one of these variables would be obviously obtained through routine  
20 experimentation. However, only result-effective variables can be optimized.

21                 As noted in *In re Anthonie*, a particular parameter must first be  
22 recognized as a result-effective variable. An example, a variable which  
23 achieves a recognized result before the determination of an optimum or  
24 workable ranges of the variable might be characterized as routine  
25 experimentation. This standard still holds true, even after the case of KSR  
26 against Teleflex in the Supreme Court. A case that is precedential, that was

1 passed down by the Board of Patent Appeals and Interferences after the  
2 reply brief was due in the case follows In re Anthonie. This is the case of ex  
3 parte Whalen. It is found at 89 USPQ 2d 1078. In that case --

4 JUDGE NAGUMO: Where in the reference would you argue  
5 that the Examiner failed? We're reasonably familiar with the case law.

6 MR. BULLARD: Thank you, Your Honor. In the cited  
7 reference the Examiner has identified head distance. Head distance in this  
8 case, as recited in the claims, is the distance between the showerhead in the  
9 process chamber and the mounting surface that supports the substrate. Now,  
10 the Examiner has pointed to the Park reference, which has a teaching of  
11 changing the distance that the substrate holder is placed with respect to the  
12 mounting table, which has a heating coil. Park teaches this for the purpose  
13 of optimizing the temperature of the wafer.

14 Now, through that action, the Examiner points out that the  
15 distance between the wafer, the substrate holder, and the gas jetting nozzles  
16 would change. However, that change is only an incidental change. Park  
17 makes no reference whatsoever to head distance and does not recognize it as  
18 a variable that achieves a recognized result.

19 Likewise, the Examiner points to a teaching in Park that notes  
20 that pressure change can be adjusted so that the temperature of the wafer can  
21 be optimized. And again, the Examiner, although the reference makes no  
22 statement whatsoever of a gas jetting velocity, states that by changing  
23 pressure, you would also be changing the gas jetting velocity. Now, that's  
24 flawed for two reasons. One, that's a statement of inherency that is  
25 unsupported by the record, but also we again have a situation where the cited

1 reference does not teach, suggest or even make any mention of the cited  
2 variable.

3 The most notable point, Your Honors, is that the independent  
4 claims don't merely recite a range of head distance and they don't merely  
5 recite a range of gas jetting velocities, but they recite an interrelationship  
6 between these two variables that's neither disclosed nor suggested by the  
7 Park reference.

8 In the face of this clear deficiency, the Examiner has not created  
9 -- has not established a prima facie case of obviousness. For that reason, the  
10 Appellant respectfully requests that the rejection based on Park be reversed.  
11 If Your Honors have no questions, we would like to finish with that for this  
12 case.

13 JUDGE OWENS: No questions.

14 MR. BULLARD: Thank you, Your Honor.

15 Whereupon, at approximately 2:42 p.m., the hearing was  
16 concluded.

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